

FILED
Clerk
District Court

APR 20 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

ALAN STUART MARKOFF, D.D.S.,)	Civil Action No. 05-0035
doing business as TOOTHWORKS)	
and OPEN CHOICE,)	
)	
Plaintiff)	
)	
v.)	ORDER GRANTING
)	MOTION TO STAY
TODD KEITH JOHNSON, D.D.S.,)	
)	
Defendant)	
_____)	

THIS MATTER came before the court on Thursday, April 13, 2006, for hearing of defendant's motion to stay this proceeding. Plaintiff appeared by and through his attorney, Mark K. Williams; defendant appeared by and through his attorney, David G. Banes.

THE COURT, having considered the written and oral arguments of counsel, rules as follows:

1 Defendant moves the court to abstain from hearing, and to stay, this
2 proceeding due to a parallel proceeding in Texas state court. For the following
3 reasons, the motion is granted.
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5 Both parties rely on the principles enunciated in Colorado River Water
6 Conser. Dist. v. United States, 424 U.S. 800, 96 S.Ct. 1236 (1976). There, the
7 United States Supreme Court recognized that abstention from the exercise of federal
8 jurisdiction is the exception, and not the rule, and set out guidelines for courts to
9 consider when confronted by abstention issues in the context of parallel state-
10 federal legal proceedings. The Court stated that a district court faced with a
11 situation of state court-district court concurrent jurisdiction could consider: (1) the
12 inconvenience of the federal forum, (2) the desirability of avoiding piecemeal
13 litigation, (3) the order in which jurisdiction was obtained, and (4) considerations of
14 wise judicial administration, giving due regard to conservation of judicial resources
15 and comprehensive disposition of litigation. Later, in Moses H. Cone Memorial
16 Hosp. v. Mercury Const., 460 U.S. 1, 103 S.Ct. 927 (1983), the Court reiterated that
17 “exceptional circumstances” should be present to justify a stay, and that the district
18 court should carefully balance the abovementioned factors in deciding whether to
19 stay or proceed. *Id.* at 460 U.S. 16.
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25 However, in Colorado River both state law and federal water rights law were
26 implicated and the state and federal court had concurrent jurisdiction. In Moses H.

1 Cone Memorial Hospital, there were parallel state arbitration and federal Arbitration
2 Act claims. Here, jurisdiction is founded solely on diversity of citizenship and no
3 other federal interests are implicated.
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5 Having weighed the factors set out above, the court finds that abstention is
6 warranted and stays this proceeding. Although the two businesses at issue here are
7 located on Saipan, the appraisal, accounting, and legal work performed was for the
8 most part done in the mainland United States. Most of the negotiations between
9 the parties and/or their representatives were conducted on the mainland, primarily
10 in Texas. Significantly, the parties agreed in their contract of sale that any disputes
11 would be resolved using Texas state law. The Texas state court proceeding was filed
12 before the lawsuit in this court was filed.¹ Both parties have Texas counsel. In the
13 initial complaint, plaintiff stated he was a resident of Houston, Texas, and in the
14 first amended complaint states he is a domiciliary of the State of Texas. Most of the
15 potential witnesses are on the mainland, as are most of the records relating to the
16 sale of the dental practice. Travel and accommodation costs would be significantly
17 greater for parties and witnesses to travel to Saipan, rather than Texas.
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22 Given all these factors, the court concludes that the Northern Mariana
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25 This court was unaware of the Texas state court proceeding until defendant
26 filed his motion for stay on March 17, 2006.

1 Islands is a more inconvenient forum to most of the participants in this litigation
2 than the Texas state court. Further, to proceed would certainly result in piecemeal
3 litigation. Given the lack of a strong federal stake in this litigation, the court
4 concludes that wise judicial administration counsels staying this matter in that there
5 is no reason to believe that the Texas court cannot render a full and fair decision on
6 all matters in dispute.
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9 If the parties stipulate to waive the statute of limitations, it would be the
10 court's preference to dismiss this matter without prejudice.
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12 IT IS SO ORDERED.

13 DATED this 20th day of April, 2006.
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18 ALEX R. MUNSON
19 Judge
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